

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5352 of 1997

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RAMESHBHAI K BUHA

Versus

KETAN KANAKRAI VASAWA  
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Appearance:

MR PN BAVISHI for Petitioner

MR RC JANI for Respondent No. 1

MR SA PANDYA APP for Respondent No. 2  
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CORAM : MR.JUSTICE M.H.KADRI

Date of Order: 24/03/98

ORAL ORDER

The petitioner by way of filing this application under Section 482 of the Code of Criminal Procedure ( "the Code" for short) has challenged the complaint and the order of process issued by the learned Metropolitan Magistrate, Court No.2, Ahmedabad, which is filed for the offences punishable under Sections 406 of the Indian Penal Code.

2. Respondent No.1 filed a complaint against the petitioner, inter-alia alleging that he is dealing in business of selling of submersible pumps and the petitioner has purchased submersible pumps on various occasions and had not paid the amount and it is further alleged that the petitioner had given cheque bearing No.085325 of Rs.21,000/- and other cheque bearing No.085327 of Rs.30,000/- .Both the cheques when deposited for encashment, came to be dishonoured. Therefore, respondent No.1 approached the petitioner and had written several letter for which the petitioner did not give reply and on some occasions given false assurances that he will pay the amount. It is alleged in the complaint that amount of Rs.95,715/- is due from the petitioner and an amount of Rs.12,115/- is to be recovered from the petitioner towards interest and costs. As the petitioner did not pay the amount even after several letter addressed to him by the respondent No.1, a complaint came to be filed before the learned Metropolitan Magistrate, Court No.2, Ahmedabad, on 28-2-97 and after due verification, the learned Metropolitan Magistrate, Court No.2, Ahmedabad, has issued process against the petitioner for the offence punishable under Section 406

of the Indian Penal Code.

3. Learned advocate for the petitioner has contended that essentially the dispute between the petitioner and respondent No.1 is of a civil nature and the respondent No.1 has initiated the Criminal proceedings as a lever to extort money from the petitioner. The submission of the learned counsel for the petitioner is devoid of merits.

4. The ingredients of the offence of criminal breach of trust are as follows :

1. Whoever being in any manner entrusted with property or dominion over property

- (a) dishonestly misappropriates or
- (b) converts to his own use or
- (c) uses or disposes of that property or
- (d) wilfully suffer any person to do so in violation of
  - (i) any direction of law or
  - (ii) any legal contract made.

The complaint reveals that the petitioner had purchased the submersible pumps from the respondent No.1, and therefore, he had disposed of the said property which was entrusted to him. The said property was misappropriated dishonestly by the petitioner and was converted for his own use. Therefore, in my view, prima facie the complaint does disclose necessary ingredients of criminal breach of trust. Even the respondent No.1 requested the petitioner to return the pumps if they were not used. This shows that the conduct of the petitioner is dishonest and he had committed the offence of criminal breach of trust.

5. Learned counsel for the petitioner has invited my attention to the decision reported in 1997 (2) G.L.R. 1655 B. Ramesh & Ors. v. State of Gujarat. In my opinion, the above decision will not be applicable to the facts of the present case as the complaint prima facie discloses the offence of criminal breach of trust. As stated, the complaint does prima facie show the ingredients of the offence punishable under Section 406 of the IPC, and, therefore, the judgment cited by the learned counsel for the petitioner will not be applicable to the facts of the present case.

6. Learned counsel for the petitioner has also submitted that the submersible pumps supplied by the respondent No.1 were defective and there was dispute

about the amount due from the petitioner. In my opinion, this argument does not survive as it involves disputed question of facts which cannot be gone into this application which is filed under Section 482 of the Code.

6. None of the contentions raised by the learned counsel for the petitioner have got any merits.

7. It is settled principle that the powers under Section 482 of the Code require to be exercised with utmost care and complaint can be quashed in rarest of rare case. As the complaint prima facie show the ingredients of offence punishable under Section 406 of the IPC, no ground exists for exercise of inherent powers by this Court under Section 482 of the Code.

8. The application is liable to be dismissed on the ground that an alternative remedy is available to the petitioner as he can approach to the learned Metropolitan Magistrate by filing an appropriate application for discharge/dropping of the procedure as propounded by the Supreme Court in the case of K.K.Mathew V. State of Kerala, reported in A.I.R.1992 SC, 2206.

9. As a result of the foregoing discussions, this application is rejected. Notice discharged.

24-3-98 (M.H.Kadri,J.)

(mithabhai)